SUPREME COURT, U. S.

APR 22 1972

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

WILLIAM JACOB JOHNSON, pro se,
1604 East Fremont Drive,
Tempe, Arizona 85282

INDEX

Page

Jurisdiction. 2

Questions Presented For Review. 2

Constitution Provision Involved. 4

Statute and Rules Involved. 4

Statement of Case. 4

Reason Why Certiorari Should Be Granted. . . . 9

Conclusion. 15

Appendix

Order Setting Time For Hearing Petition. . . . . App. 1

Order Denying Petition . . . . . App. 2

Order Granting Filing Of Motion For Reconsideration. . . . . App. 3

Order Denying Motion For Reconsideration. . . . . App. 4

AUTHORITIES CITED

Cases:	Page
Baird v. State of Arizona, 401 U.S. 1 (1971)	12
Brown v. Board of Education, 347 U.S. 483 (1954)	11
Buchanan v. Warley, 245 U.S. 60 (1917)	14
Dandridge v. Williams, 397 U.S. 471 (1970)	13
Ferguson v. Skrupa, 372 U.S. 726 (1963)	13
Gillette v. United States, 401 U.S. 437 (1971)	14
Griggs v. Duke Power, 401 U.S. 424 (1971)	11
Hackin v. Lockwood, 361 F.2d 499 (9th Cir. 1966)	10
Harmon v. Tyler, 273 U.S. 668 (1927)	14
Heaney, Application of, 476 P.2d 846 (1970)	14
Hurtado v. California, 110 U.S. 516 (1884)	14
Labine v. Vincent, 401 U.S. 532 (1971)	13
Loving v. Commonwealth of Virginia, 388 U.S. 1 (1967)	13
Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)	12
McGautha v. California, 402 U.S. 183 (1971)	12
McLaughlin v. Florida, 379 U.S. 184 (1964)	13
Murcheson, In re, 349 U.S. 133 (1955)	13

	Page
Plessy v. Ferguson, 163 U.S. 537 (1896)	11
Railroad Com. v. Pullman Co., 312 U.S. 496 (1941)	15
Sander v. Gray, 203 F. Supp. 158 (1962)	11
Schware v. Board of Bar Examiners, 353 U.S. 232 (1957)	11, 12, 13
Shapiro v. Thompson, 394 U.S. 618 (1969)	13
Shelley v. Kraemer, 334 U.S. 1 (1948)	13, 14
Skinner v. Oklahoma, 316 U.S. 535 (1941)	13
Snowden v. Hughes, 321 U.S. 1 (1944)	13
South v. Peter, 339 U.S. 276 (1950)	13
Strauder v. West Virginia, 100 U.S. 303 (1879)	10
Summers, In re, 325 U.S. 561 (1945)	2
Yick Wo v. Hopkins, 118 U.S. 356 (1886)	10, 11, 13
Constitution:	
U.S.C.A. Const. Amend 14	
Statutes and Rules:	
28 U.S.C. 1257 (3)	2
Arizona Revised Statutes, as amended:	
Vol. 10, ARS § 32-201, 237	4, 10
Vol. 17; Rules of the Supreme Court, Rules 27 & 28	3, 4, 5, 9, 10, 14

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1971

No. .....

WILLIAM JACOB JOHNSON,
Petitioner

v.

COMMITTEE ON EXAMINATIONS AND
ADMISSIONS OF THE
SUPREME COURT OF ARIZONA,
Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, William Jacob Johnson, hereby petitions for a writ of certiorari to review the decision of the Supreme Court of the State of Arizona denying admission of Petitioner to the State Bar in said State, despite overwhelming evidence that Petitioner and other examinees were discriminated against due to purposeful invidious, unequal, unfair, arbitrary, capricious grade review proceedings by the Committee on Examinations and Admissions of the Supreme Court, before and after announcement of the successful examinees of the State Bar examination, infected, inter alia, by an admitted and perhaps continuing racial favoritism policy and practices.

JURISDICTION

The orders sought to be reviewed were made and entered on January 18, 1972 and on February 29, 1972 concerning the denial of a petition and a timely motion for reconsideration, respectively. There were no opinions. The statuatory provision believed to confer on this Court jurisdiction is 28 U.S.C. Section 1257 (3). See also In re Summers, 325 U.S. 561 (1945).

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Committee on Examinations and Admissions of the Supreme Court (the Committee) contravened the Due Process and the Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States when on its own secret motion, following the July 1970, February 1971 and July 1971 examinations, it broke the Race and/or Color seal of examination paper confidentiality by photograph or other identification means of only Negro failing examinees, regardless of the severity of their failing grade, then segregated these papers to allow an arbitrary passing standard to apply in a final grade review prior to announcement of the successful examinees.

2. Whether the Committee secret Negro or Black only favoritism policy and practices were invidiously discriminatory and repugnant to the Fourteenth Amendment when (a) other accredited law school examinees (e.g., American Indians, Mexican-Americans, Swedish-Americans and other groups) were excluded; (b) in a similar fact Negro final record case, the Committee Chairman admitted the policy was wrongful to "Whites"; (c) failing Negro examinees would be given a "little nudge if they were at the bor-

derline or a little less to help to put them over" when they were "reasonably close to the passing mark, in other words, somewhere above 68.0" percent; and (d) the Committee Chairman said: "I told Doris Odom to give him (a Negro) a passing grade" based upon his answers being of "sufficient quality" despite his failing grade after grading and review under the Race, Color and Creed seal of confidentiality.

3. Whether the Committee deprived Petitioner and other examinees of life, liberty and property without Due Process and the Equal Protection of the laws guaranteed by the Fourteenth Amendment when (a) examinees, in the past, were automatically passed either at a 69.0 or 69.3 percent level because "there could have been a 1 percent error in grading." despite a Rule requiring 70.0 percent as the minimum passing grade; (b) arbitrary and capricious decisions have recommended special applicants with lower grades than your Petitioner and other examinees after submitting a formal petition for review of examination papers; (c) it said that the Rules are "our guidelines", whereas, Petitioner recognized the same as law, transacted good faith Bar Examination agreements in accordance with the conditions set forth in said Rules, and submitted fees as consideration to said agreements; and (d) a minority attendance participation (i.e., three out of seven) is only required to deny a "Petition for Review of Examination papers of Applicant" as provided by Rule 28(c), XII, E of the Rules of the Supreme Court, in other words, a minority number, even one member according to the evidence may deny a petitioner's right to practice law, a property right.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, United States Constitution, particularly, Sec. 1, cl. 2: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTE AND RULES INVOLVED

Arizona Revised Statutes, Vol. 10, 32-201, 237; Vol. 17, Rules of the Supreme Court, Rule 27(b), (f), as amended, Rules 28(a), as amended, Committee on Examinations and Admissions, ". . . For such purpose, a committee . . . consisting of seven active members . . . shall be appointed by this Court . . ."; Rule 28(c), II, IV(6), VIII and XII, E., Conduct of hearings, Proceedings Upon Failure to Receive Satisfactory Grade, para. 5, cl. 3, "If at least three members . . . concur . . . that . . . answers . . . were not unfairly graded . . . no further review . . . shall be required of the Committee."

STATEMENT OF CASE

William Jacob Johnson, age 47, a Swedish-American, a three year veteran of World War II, a Bachelor of Science (Chemical Engineering), a former executive of a large copper company for 17 years, a former holder of United States secret clearance, was a member of the Arizona State University College of Law charter graduating class of June 1970. He took the Arizona Bar examination in July 1970 receiving a grade of 68.3 percent and 72.0 percent in ethics. The Rules of the Supreme Court require a minimum grade of 70.0 percent in the general examination and eth-

ics, Rule 28(c), VIII; by unwritten rule, once passed in ethics is sufficient qualification. He next took the February 1971 and July 1971 examinations and had grades of 68.6 and 69.5 percent, respectively. Following the February 1971 examination, he submitted a proposed rule to the Committee on Examinations and Admissions of the Supreme Court (the Committee) which was summarily dismissed by the Chairman; then by petition to the Supreme Court. (No. 10484). A general rule of reviewal of the whole record and that the highest grade of each of the 14 legal subjects of the examination only be recognized (like ethics) if an examinee has taken the Bar examination two or more times, if consecutive, was proposed. It was submitted that this proposal was reasonable, fair and fulfilled the intent of the Rules. It was denied without opinion.

Only after the July 1971 examination did he submit a formal petition to the Committee for review of his examination papers as provided by the Rules. Eighty days thereafter, on December 24, 1971, a summary dismissal was received. He then petitioned (certified record file No. S.B.-10) the Supreme Court on January 11, 1972, alleging Committee denial of his United States Constitutional rights of Due Process and Equal Protection of the Fourteenth Amendment referring to news media publications which manifested a Negro extra consideration policy declared by the Chairman, wherein, Negroes only, would be passed at an arbitrary, lower standard than all other examinees. This policy was deemed offensively discriminatory. Also, it was alleged that part of the Rule concerning denial of a petition was unconstitutional, since a minority of the

Committee could deny a formal petition. An oral hearing before the Court was held one week later. The Chairman was conspicuously absent. The Vice Chairman was the respondent which was without precedent. Further, no written response was ordered or submitted as required by the Rules or as established by precedence for this type of hearing. The petition was denied without opinion on January 18, 1972.

On January 21, 1972 a transcript of a failing Negro examinee's evidentiary hearing of September 3, 1971 became accessible. This had been a closed hearing. The factual setting of the hearing and his final record were on "all fours" to your Petitioner's case. The testimonial evidence by four Committee members acted as an adhesive to affix pieces of other evidentiary matters into a completed puzzle. Based upon this new probative evidence of purposeful race and/or color favoritism treatment practices, a timely request was made for a rehearing. A motion for reconsideration was granted without oral argument and a Committee response ordered. Said response from the Chairman, not the Vice Chairman, stated that your Petitioner was not disadvantaged due to the Negro only policy because he formally petitioned after the July 1971 examination results were public, so his papers received the same attention as did Negroes who had their papers especially reviewed before public announcement of the successful examinees. Said response completely ignored the fact that the Negro policy was adopted and was effective to the July 1970 examination; that said policy was applied to the February 1971 examination; that he did not formally petition after these examinations; and that

other non-Negroid failing examinees did not formally petition after the three examinations in point. Further, said response expressly and impliedly stated that the Committee had a "concern" that Negroes have reason to suspect discrimination in our legal system, therefore special Negro reconsideration using a lower final grade standard was justifiable and demanded to preclude any claim of discrimination. Also, that an obligation to admit more Negroes to the Bar was mandated to avoid exacerbating racial tensions and to prevent current disorders in judicial proceedings. (See certified record Reply.)

The legal proceedings which unveiled the Committee secret Negro grade review policy were as follows: A Negro, Charles S. Murray, a former classmate, took the same Bar examinations as your Petitioner and failed each time. After the February 1971 examination, Mr. Murry petitioned the Supreme Court claiming discrimination against Negroes by the Committee (certified record file No. 10563). Prior to his hearing on July 13, 1971 a Committee affidavit response stated that discrimination against Negroes was not possible because a special segregated Negro grade review policy which affected all failing Negro papers, regardless of the severity of the failing grades, became effective with the July 1970 examination. (All non-Negroid examinees with grades below "something above 68.0" percent were never reviewed.) At the Murry Hearing, (certified record label) before the Court, the Chairman admitted the favoritism Negro review policy was wrongful when he said: "Perhaps wrongfully, at least from the standpoint of the Whites, it was wrongful." Further, the Chairman admitted that a Negro, Mr. Bursh, was rec-

ommended to the Bar after the July 1970 examination utilizing a standard of "sufficient quality" of his answers despite his failing grade, which impliedly was "somewhere above 68.0" percent "or a little less" and only by resort to the Negro special review policy. Next, the Court scheduled an evidentiary hearing on September 3, 1971. A master, former Superior Court Judge, Thomas Tang, who presided over said hearing (certified record label, Tang Hearing) determined there was no discrimination against Mr. Murry, because Negroes were donees of favoritism reconsideration. The transcript of said hearing, not accessible until January 21, 1972 unequivocally evidences Committee racial bias statements and practices. The Negro only policy excluded other so-called "minorities", such as American Indians, Mexican-Americans, Swedish-Americans as well as other acredited law school examinee race, color, creed and sex groups. When confronted with the unfairness and inequality of said policy, the Chairman admitted that maybe it was done impulsively, that maybe it was a mistake, and that continuance was very debatable, one year or three examinations after the fact. On September 29, 1971 the Court denied Mr. Murry's petition; thereafter his file without the evidentiary hearing transcript, was open to the public.]

By utilizing the foregoing facts, inter alia, your Petitioner submitted that he would have been unequivocably mentally qualified to be admitted to the State Bar if the same standard, applicable to Negroes only, beginning with the July 1970 examination would have been equally relevant to any of his three examinations in point. He, also, submitted that the grade review proceedings mani-

fested a lack of good faith; that said review proceedings were a sham, a nullity, and unconstitutional to petitioner and all failing non-Negroids.

He further established arbitrary, capricious practices of the Committee by citing a former Committee member's letter of August 3, 1970 to the Chairman which admits automatically passing all examinees in the past at 69.0 or 69.3 percent level because "there could have been a 1 percent error in grading" (certified record file No. 10076). Also, he argued, without denial by the Committee, that other special failing examinees, who formally petitioned after grade announcement were given favorable reconsideration because one was a licensed attorney from another State; one was a Captain in the Air Force; and one was a female Negro attorney, despite all three having grades below your Petitioner's July 1971 examination grade (i.e., 69.3, 69.1, 69.3, respectively, compared to his 69.5 percent).

Finally, he stated without equivocation, that if he had known of the favoritism racial policy following the July 1970 examination; that if he had known the Committee used the Rules of the Supreme Court as "our guidelines", he would not have entered into an agreement to take the two succeeding examinations. Also, that he has been irreparably injured from detrimentally relying upon the examination and admission proceedings being administered equally and fairly when, in fact, they were not.

REASONS WHY CERTIORARI SHOULD BE GRANTED

By virture of the Rules of the Supreme Court, Rules 27(b), 28(a), and 28(c), as amended, the

Committee on Examinations and Admissions of the Supreme Court is an administrative agency of the Court, appointed by the Court, which executes the rules of admission promulgated by the Court; whereas the office of the State Bar, a public corporation (A. R. S. 32-201) is entrusted with the clerical duties for said Committee, Rules 27(f), 28(c), II, as amended. In this context, the Committee, on its own motion, secretly determined an especial classification of failing accredited law school examinees based upon race and/or color. Whether State appointed authorities or agents shall be permitted to subdivide the restrictive accredited law school examinee classification, Rule 28(c), IV, cl. 6; Hackin v. Lockwood, 361 F.2d 499 (9th Cir. 1966), by race and/or color; whether such secret final grade review segregation of the examination papers was grossly unfair, unequal, invidiously discriminatory and shocking to the universal sense of justice; and whether a standard of "sufficient quality" of answers is vague, arbitrary and capricious as it applied to only Negro failing examinees, frames the main issues.

Beginning with Strauder v. West Virginia, 100 U.S. 303, 307, 310 (1879), the Court commanded that the Fourteenth Amendment was to be construed liberally; that "(T)he law in the States shall be the same for the black as for the white; that all persons whether colored or white shall stand equal before the laws of the States,"; and that "Its (the Fourteenth Amendment) aim was against discrimination because of race or color." Next, Yick Wo v. Hopkins, 118, U.S. 356, 369 (1886), applied the law when the Court said: "(E)qual protection of the laws is a pledge of

protection of equal laws." Also, that "For, the very idea that one man may be compelled to hold his life or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." Yick Wo v. Hopkins, 118 U.S. at 370. In a transportation case, Plessy v. Ferguson, 163 U.S. 537 (1896), the Court declared the "Separate but Equal" doctrine. It was overruled in the field of public education by Brown v. Board of Education, 347 U.S. 483 (1954), when the Court held there can be no intentional race or color segregation based upon the premise that separate but equal is not equal, the moment you divide people, that is the moment you create inequality. Finally, Griggs v. Duke Power, 401 U.S. 424, 430 (1971) in a Title VII case held that "(T)he Act does not command that any person be hired simply because he was formerly the subject of discrimination or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." and that racial discrimination is invidious discrimination. Another definition of invidious discrimination appears in Sander v. Gray, 203 F. Supp. 158, 168 (1962) wherein the Court said: Unlike per se invidiousness, springing from discrimination based on race, color or creed, we must deal here with discrimination not so infected." See also Schware v. Board of Bar Examiners, infra, 353 U.S. at 239.

Inasmuch as the Committee offered no legal authority for the establishment of the double standard Bar examination passing grade level following the segregation of examination papers by

race and/or color, it can be stated that this is contrariwise to Marbury v. Madison, 5 U.S.(1 Cranch) 137, 163 (1803), in which the Court said our government is "termed a government of laws, not of men"; therefore, the Committee action represents government by whim which is the very antithesis of due process. McGautha v. California, 402 U. S. 183, 250 (1971), (dissenting opinion).

The Arizona Bar examination is essentially a culture-free test. It is rationally related to knowledge obtained from three years study at an accredited law school and is designed to determine if all accredited law school graduate examinees, who are then under like circumstances, are legally competent to practice law. In Schware v. Board of Bar Examiners, 353 U.S. 232, 238,239 (1957), the Court said: "A State cannot exclude a person from the practice of law . . . in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. (4 citations). . . . A State can require high standards of qualification, such as . . . proficiency in its law, . . . but any qualification must have a rational connection with the applicant's . . . capacity to practice law. (3 citations). . . . Even in applying permissible standards, officers of a State cannot exclude an applicant . . . when their action is invidiously discriminatory. (citation)." Petitioner contends that based upon the aforementioned cases, his property right, the right to practice law, Baird v. State Bar of Arizona, 401 U.S. 1, 8, (1971), was unconscionably abridged; because he did not receive the same timely especial treatment as Negroes; because he and other non-Negroids, similarly situated, had examination grades equal to or higher than the Negro standard established at the time of the 1970 (July) examina-

tion; and because the racial segregation of Negro examination papers was for the express purpose of rendering favoritism treatment. Therefore, your Petitioner and other non-Negroids were victims of invidious discrimination that is forbidden by the Fourteenth Amendment. Labine v. Vincent, 401 U.S. 532, 548 (1971), (dissenting opinion); Dandridge v. Williams, 397 U.S. 471, 483 (1970); Shapiro v. Thompson, 394 U.S. 618, 633 (1969); Loving v. Commonwealth of Virginia, 388 U.S. 1, 10 (1967); McLaughlin v. Florida, 379 U.S. 184, 192, 193 (1964); Ferguson v. Skrupa, 372 U.S. 726, 732 (1963); Schware v. Board of Bar Examiners, 353 U.S. at 239; South v. Peter, 339 U.S. 276, 281 (1950), (dissenting opinion); Shelley v. Kraemer, 334 U.S. 1, 21 (1948); Skinner v. Oklahoma, 316 U.S. 535, 541 (1941); Yick Wo v. Hopkins, 118 U.S. at 373, 374. A statement by Douglas, J., dissenting in South v. Peter, 339 U.S. at 279, considered appropriate to the case at bar was: "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of goverment", a fortiori, when a race, color, creed or sex group receives favoritism reconsideration in a Bar examination grade review; then said group, or part thereof, is recommended to the Bar by resort to an arbitrary passing standard. See also Snowden v. Hughes, 321 U.S. 1, 8 (1944).

Further, the statement "(O)ur system of law has always endeavored to prevent even the probability of unfairness", In re Murcheson, 349 U.S. 133, 136 (1955), does not equate with the segregation Negro policy, nor the former automatic admission policy of examinees with grades of 69.0 or 69.3 percent, nor the lack of a good faith agree-

ment with the Committee because the conditions or rules of the agreement were used only as guidelines by the Committee. Pertinent to the foregoing is the Court's statement that "Law is something more than mere will asserted as an act of power. It must be not a special rule for a particular person or a particular case.". Hurtado v. California, 110 U.S. 516, 535 (1884).

It is fundamental to our system of freedom or democracy that a majority vote or more is required to decide the issues of our society or our government, if constitutional. Buchanan v. Warley, 245 U.S. 60(1917), Harmon v. Tyler, 273 U.S. 668 (1927). Contrary to this established principle, Rule 28(c), XII, E permits three of seven Committee members to deny a formal petition presented to the Committee. The certified record Motion for Reconsideration, evidences that even one Committee member can deny a formal petition. On its face, this rule, its actual application, is not within the "four corners" of our Constitution. "When the Government exacts . . . much, the importance of fair, even handed, and uniform decision making is obviously intensified." Gillette v. United States, 401 U.S. 437, 455 (1971). How does the Committee justify its arbitrary favorable decisions concerning the failing examinees who formally petitioned? e.g., Application of Heaney, 476 P.2d 846 (1970) (Admitted to Bar on January 19, 1971).

Is there now a beginning of Black justice and White justice? The Committee, on its motion, has promulgated this unwritten rule of law in Bar examinations in Arizona. What will be their next "concern" in dispensing thei- "indiscriminate imposition of inequalities"? Shelley v. Kraemer, 334 U.S. at 22. How pervasive or contagious will

this infected policy be upon other disciplines of life, particularly, when it has been publicized and criticized by the news media, but to no avail? The "Black power" pressures of the past and present exerted on society and the government at the local, state and national levels have oftentimes been warranted to obtain equality of the laws, but countervailing forces are inevitable if it is established that non-Blacks are being deprived of life, liberty and property due to especial treatment or lower professional licensing standards applying to Blacks only, as in this case. It is sincerely believed the foregoing manifests an unbelieveable and unconscionable set of circumstances which present substantial federal questions. Railroad Com. v. Pullman Co., 312 U.S. 496 (1941).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of Arizona.

Respectfully submitted,

William Jacob Johnson

WILLIAM JACOB JOHNSON, pro se
1604 East Fremont Drive
Tempe, Arizona 85282

April 19, 1972

IN THE SUPREME COURT OF THE

Petitioner,

vs.

Respondent.

No. SP 10

ORDER SETTING TIME

FOR HEARING PETITION

The Petitioner in the above entitled matter, having filed a Petition for Special Action,

IT IS HEREBY ORDERED: that the informal hearing for said petition is set on Tuesday, the 18 day of January, 1972, at the hour of 10:00 o'clock a.m., before this Court in the Supreme Court Hearing Room in the City of Phoenix, Arizona, or as soon thereafter as the same can be heard.

DATED this 11th day of January, 1972.

Chief Justice

Supreme Court

STATE OF ARIZONA

Phoenix

85007

January 19, 1972

IN THE MATTER OF THE APPLICATION OF

WILLIAM JACOB JOHNSON

TO BE ADMITTED AS A MEMBER OF THE STATE BAR OF THE STATE OF ARIZONA,

Petitioner,

Supreme Court
No. SB-10

The following action was taken by the Supreme Court of the State of Arizona on January 18, 1972 in regard to the above-entitled cause:

"ORDERED: The Court denies application."

CLIFFORD H. WARD, Clerk

By Mary Ann Hopkins
Deputy Clerk

TO: William Jacob Johnson, 1604 East Fremont Drive, Tempe, Arizona 85282
George Read Carlock, Esquire, Committee on Examinations and Admissions, 858 Security Building, Phoenix, Arizona 85004
Eldon Husted, Executive Director, State Bar of Arizona, 858 Security Building, Phoenix, Arizona 85004

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF THE APPLICATION OF WILLIAM JACOB JOHNSON TO BE ADMITTED AS A MEMBER OF THE STATE BAR OF THE STATE OF ARIZONA Petitioner.	NO. SB-10 O R D E R

IT IS ORDERED granting the applicant herein to and including February 8, 1972, to file a Motion for Reconsideration; Committee on Examinations and Admissions of the State Bar of Arizona has fifteen (15) days thereafter in which to file a Response to said Motion.

IT IS FURTHER ORDERED that no further oral argument will be granted.

DATED this 25th day of January, 1972.

Jack D. H. Hays
Chief Justice

cc: William Jacob Johnson
George Read Carlock
State Bar of Arizona

App. 3

FILED
JAN 25 1972
CLIFFORD H. WARD
CLERK SUPREME COURT
BY

Supreme Court

STATE OF ARIZONA

Phoenix

85007

March 1, 1972

In The Matter Of The Application Of

WILLIAM JACOB JOHNSON

To Be Admitted As A Member Of The State Bar Of The State Of Arizona.

Supreme Court
No. SB-10

The following action was taken by the Supreme Court of the State of Arizona on February 29, 1972 in regard to the above-entitled cause:

"ORDERED: Motion for Reconsideration - DENIED."

CLIFFORD H. WARD, Clerk

By Mary Ann Hopkins
Deputy Clerk

TO: William Jacob Johnson, 1604 East Fremont Drive, Tempe, Arizona 85282
George Read Carlock, Esquire, Committee on Examinations and Admissions, 858 Security Building, Phoenix, Arizona 85004
Eldon Husted, Executive Director, State Bar of Arizona, 858 Security Building, Phoenix, Arizona 85004

SUPREME COURT, U. S.

FILED

MAY 23

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondent.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Arizona

DONALD FREDERICK DAUGHTON
DAUGHTON FEINSTEIN & WILSON
1840 First National Bank Plaza
100 West Washington
Phoenix, Arizona 85003
Counsel for Respondent

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondent.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Arizona

JURISDICTION

The Committee on Examinations and Admissions of the Supreme Court of Arizona (Committee) is not a proper party to this Petition. Its function is to examine applicants and recommend to the Arizona Supreme Court for admission to practice those applicants who are considered by the Committee to have the necessary qualifications and to fulfill the requirements prescribed by the rules of the Board or Governors as approved by the Arizona Supreme Court

respecting examinations and admissions. The Supreme Court of the State of Arizona has the ultimate responsibility for the admission to the practice of law or the disbarment of a person licensed to practice law. *In re Sullivan,* 64 Ariz. 337, 170 P.2d 614 (1946); *In re Lewkowitz,* 70 Ariz. 325, 220 P.2d 229 (1950); *Application of Levine,* 97 Ariz. 88, 397 P.2d 205 (1965) and Rule 28(a), Rules of the Supreme Court of Arizona.

QUESTIONS PRESENTED

1. Has Petitioner adequately demonstrated that he possesses sufficient knowledge of the law in the Bar examination papers written by him in either July 1970, February 1971 or July 1971 to be entitled to be licensed to practice law in the State of Arizona?

2. Has Petitioner demonstrated that any conduct on the part of the Committee on Examinations and Admissions of the Supreme Court of Arizona has in anyway resulted in any prejudice to the grading of the examination papers written by him in the Bar examinations administered by the Committee in either July 1970, February 1971 or July 1971?

STATUTE AND RULES INVOLVED

Rule 28(a) of the Rules of the Supreme Court of the State of Arizona provides in applicable part:

> "The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purpose, a committee on examinations and admissions consisting of seven active members of the state bar shall be appointed by this court upon the recommendation of the board of governors of the state bar which shall recommend at least three members of the state bar for each appointment to be made. . . . The committee shall examine applicants and recommend to this court for admission to practice applicants who are found by the committee to have the

necessary qualifications and to fulfill the requirements prescribed by the rules of the board of governors as approved by this court respecting examinations and admissions heretofore adopted and made effective May 25, 1948, and as amended effective February 1, 1954, and such other rules as hereafter may be adopted. The court will then consider the recommendations and either grant or deny admission. Amended, effective Sept. 15, 1970."

Rule 28(c)XII E in applicable part pertains to "Proceedings Upon Failure To Receive Satisfactory Grade." All of Rule 28(a) and the pertinent portion of Rule 28(c)XII E is printed in full as Appendix A attached.

STATEMENT

Petitioner has on three occasions failed the Bar examination administered by the Committee on Examinations and Admissions of the Supreme Court of Arizona. These examinations were conducted in July 1970, February 1971 and July 1971. After being advised by the Committee that he had failed to receive a passing grade in the February 1971 examination, Petitioner proposed a rule change for the computation of grades and submitted the proposal to the Chairman of the Committee. The Chairman responded advising Petitioner that the procedure recommended by him for recognizing the higher grade per subject on two consecutive examinations was not within the rules as promulgated by the Arizona Supreme Court and that the Committee was without power to change those rules (Exhibit 3 to Petition dated April 19, 1971 in the Supreme Court of the State of Arizona Cause No. 10484). Petitioner then filed a Petition in the Supreme Court of the State of Arizona asking that he be admitted on the basis of recognizing the higher grade per subject on the two consecutive examina-

tions which he had then taken. The Committee responded to this Petition by simply stating that its authority was that which was delegated to it by the court, and it would be an excess of that authority if it followed the procedure recommended by Petitioner. The Supreme Court of Arizona denied that Petition on May 11, 1971 (Order dated May 12, 1971, Supreme Court of the State of Arizona in Cause No. 10484). In July 1971, Petitioner again wrote the Bar examination and again failed to receive a passing score. Only after this third failure did Petition seek a review of his examination papers in accordance with Rule 28(c)XII of the Rules of the Supreme Court of Arizona (Exhibit 6 to original Petition filed In The Matter of the Application of William Jacob Johnson To Be Admitted as a Member of the State Bar of Arizona No. SB-10 in the Supreme Court of the State of Arizona).

ARGUMENT

Petitioner in his Petition for Writ of Certiorari relies in large part upon testimony given before a Master appointed by the Supreme Court of Arizona in connection with the application of Charles S. Murry to be admitted as a member of the State Bar of Arizona. In this regard, it should be understood that Charles S. Murry has taken the Bar examination administered by the Committee on the same three occasions as Petitioner, i.e., July 1970, February 1971 and July 1971, and has on each occasion failed to receive a satisfactory grade and has not been admitted as a member of the State Bar of Arizona. The hearing before the Master appointed by the Supreme Court of Arizona resulted from Mr. Murry's charges of arbitrariness, capriciousness and discrimination in the grading of his examination written in February 1971 (Petition for Review of Examination Papers filed July 11, 1971 in Cause No. 10563

in the Supreme Court of the State of Arizona and formal Order of Supreme Court, State of Arizona, dated July 13, 1971 in Cause No. 10563). Murry's Petition was denied by the Arizona Supreme Court on September 29, 1971. Respondent respectfully requests this court take judicial notice of Cause No. CIV. 71-692 Phx. in the United States District Court for the District of Arizona entitled *Charles S. Murry, Plaintiff, v. The Supreme Court, State of Arizona, Mark Wilmer, George Read Carlock, William E. Kimble, David K. Wolfe, Robert D. Myers, H. J. Wolfinger and James L. Richmond, Members of the Committee on Examinations and Admissions to the State Bar of Arizona, Defendants,* wherein Mr. Murry sought $365,000.00 in damages in addition to a court order directing his admission as a member of the State Bar of Arizona, which action was dismissed with prejudice for lack of jurisdiction on March 16, 1972 by William P. Copple, United States District Judge.

Petitioner has quoted out of context certain statements from the testimony of a member of the Committee given during a full day's hearing before Thomas Tang, Esq. sitting as Special Master In The Matter of the Application of Charles S. Murry To Be Admitted as a Member of the State Bar of the State of Arizona in Cause No. 10563 in the Supreme Court of the State of Arizona (Reporter's Transcript of Proceedings). A review of the entire 208-page transcript establishes beyond question that it is the policy and practice of respondent to administer fairly and impartially to all applicants Bar examinations conducted in accordance with the rules prescribed by the Supreme Court of Arizona. There is not one shred of evidence contained anywhere in the record transmitted to this Court to establish or even suggest that Petitioner's examination papers were graded down or that he was given any grade other than the answers written by him deserved. Without

such a showing, it is obvious that his claim of discrimination is unfounded.

Petitioner claims at page 14 of his Petition that Rule 28(c)XII E could conceivably prevent an applicant from receiving a review of his examination papers by less than a majority vote. However, he admits at page 5 of his Petition that only once did he formally petition the Committee for a review of his examination papers and, in fact, his examination papers were reviewed by the Committee. It is obvious, therefore, that he has suffered no prejudice as a result of Rule 28(c)XII.

CONCLUSION

It is respectfully submitted that Petitioner's complaints are not well founded, that he has no evidence of prejudicial conduct in the grading of his examination papers and that his Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DONALD FREDERICK DAUGHTON
DAUGHTON FEINSTEIN & WILSON
1840 First National Bank Plaza
100 West Washington
Phoenix, Arizona 85003
Counsel for Respondent

(Appendix A Follows)

Appendix A

Rule 28(a) of the Rules of the Supreme Court of Arizona

Rule 28. EXAMINATION AND ADMISSION

Rule 28(a) Committee on examinations and admissions; powers and duties.

The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purpose, a committee on examinations and admissions consisting of seven active members of the state bar shall be appointed by this court upon the recommendation of the board of governors of the state bar which shall recomment at least three members of the state bar for each appointment to be made. Upon the effective date of the amendment of this rule, the court shall make appointments to the committee on examinations and admissions as follows: That person most recently appointed to the committee shall be reappointed for a term of four years and in order of inverse seniority on the committee, the next three existing members shall be reappointed for terms of three years, two years and one year, respectively, and three new members shall be appointed, one for a term of seven years, one for a term of six years and one for a term of five years. Thereafter, upon the expiration of a member's term, the court shall appoint a new member to serve for a term of seven years. In the event of a resignation or inability of a committee member to serve, the court shall appoint another person to serve the unexpired term. The committee shall examine applicants and recommend to this court for admission to practice applicants who are found by the committee to have the necessary qualifications and to fulfill the requirements prescribed by the rules of the board of governors as approved by this court respecting examinations and admissions heretofore adopted and made effective May 25, 1948, and as amended effective February 1, 1954, and

such other rules as hereafter may be adopted. The court will then consider the recommendations and either grant or deny admission. Amended, effective Sept. 15, 1970.

Applicable portion of Rule 28(c)XII E of the Rules of the Supreme Court of Arizona

RULES OF THE SUPREME COURT
Rule 28(c) XII E

Proceedings Upon Failure To Receive Satisfactory Grade

An applicant aggrieved by the failure of the Committee to award said applicant a satisfactory grade upon an examination may proceed as follows:

Such applicant shall within 20 days after results of such examination have been announced file a petition with the Committee styled as hereinbefore provided for other proceedings before the Committee entitled "Petition for Review of Examination Papers of Applicant."

Said application shall be verified by the applicant personally and shall specifically enumerate the questions and answers claimed to have been unfairly graded and the particulars wherein it is claimed the grade awarded by the Committee is unjustified by the merits of the answer. No general claim of unfairness will be entertained by the Committee and any such application which does not particularize and specify the exact and complete particulars of the claimed improper and unfair grading shall be dismissed summarily.

Applicant shall also state under oath that such applicant has reviewed all of the other questions and answers in the entire examination written by said applicant and that judged by the same standards applied in grading the other questions and answers of the applicant, the grade awarded

was unfair and did not reasonably represent the credit to which applicant was entitled for the answers to the questions so specified as unfairly graded.

Upon receipt of such application the Committee shall informally review the same and make such review of the applicant's examination papers as the Committee believes to be necessary in order to properly evaluate the fairness of the grades awarded such applicant of which complaint is made. The Committee need not convene as a body for the purpose of such review. If at least three members of the Committee concur in finding that the answers to the questions were not unfairly graded, the Committee shall so advise the applicant and no further review of the examinations papers of such applicant shall be required of the Committee. In the event, however, that two members of the Committee are of the opinion that the papers of the applicant were or may have been unfairly graded, such members shall so state in writing with their reasons for such opinion, which reasons shall be made a part of the review proceeding. If two members of the Committee shall so dissent in writing from the majority decision the applicant may file a petition with this Court for a review of the entire examination of said applicant and this Court shall in its discretion either grant or refuse such review. No such review shall be granted unless the reasons for dissent of two members are stated in writing. Such review if granted shall be based upon the record as made before the Committee and no further proceedings shall be had before this Court except as specifically ordered by this Court.

In the event the Committee by vote of the majority of its members finds the examination was unfairly or improperly graded and that if properly and fairly graded in accordance with the standard used by the Committee in grading the examination generally that such applicant should have been awarded a satisfactory grade, the Committee shall thereupon certify the applicant to this Court with the recommendation that such applicant be admitted to practice in the same manner as if the applicant had been given a satisfactory grade upon the examination.

LIBRARY
SUPREME COURT, U. S.

MAY 29 1972
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

PETITIONER'S REPLY MEMORANDUM

WILLIAM JACOB JOHNSON, pro se,
1604 East Fremont Drive,
Tempe, Arizona 85282

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,
v.
COMMITTEE ON EXAMINATIONS AND
ADMISSIONS OF THE
SUPREME COURT OF ARIZONA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

PETITIONER'S REPLY MEMORANDUM

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, in his opposing brief in No. 71-1362, not dated but received by Petitioner on May 22, 1972, alleges that the Committee on Examinations and Admissions of the Supreme Court of Arizona (Committee) is not a proper party to this Petition. In the ONLY PRIOR written response (Response to Motion for Reconsideration to No. SB-10 dated the 21st day of February) the Committee Chairman, Mark Wilmer, stated: "In conclusion, since the obligation of

the Committee members as to passing or failing an applicant whose grades are borderline is a difficult and delicate task and largely a matter of judgment, the Committee believes that it responsibly discharged its obligation to this Court by initiating a review of a Black applicant's grades, on its own motion, prior to release of the grades." In Schware v. Board of Bar Examiners, 353 U.S. 232, 233, 234 (1957), it is perfectly clear that the functions of the "Board" in the State of New Mexico are analogous to the "Committee" in the State of Arizona. Therefore, the "Committee", based upon the foregoing, has heretofore been recognized as a proper party to this type of Petition.

On pages 4 and 5 of the first paragraph of the ARGUMENT, Respondent attempts to equate the Charles S. Murry, a Negro, legal proceedings (Cause No. 10563 in the Supreme Court of Arizona) to issues of this Petition, No. 71-1362. Mr. Murry's allegations are in the context of claims of discrimination by the Committee against Negroes. The proceedings, incompletely enumerated by Respondent, evidence especial treatment to all failing Negro Bar examinees. Included in the certified record, presently in the possession of the Court, is an affidavit response, filed on July 8, 1971, in the Matter of Charles S. Murry, (Cause No. 10563) wherein on page 1 the Committee Chairman states: "In answer to paragraph VII, your Committee alleges: Your Committee is conscious of the need for additional representation of minority groups in the legal profession and is and has been of the belief that every reasonable consideration should be extended to any member of a minority race sitting for the Bar examination. In recent years, the first time any Black applicants applied for and sat for a Bar examination was the July

1970 examination. Your Committee prior to its grade review meeting following the July 1970 examination entrusted to Mrs. Doris Odom, the Assistant Secretary, the responsibility for ascertaining the identity, prior to the grade review meeting, of each Negro applicant and determining whether or not any of the Negro applicants had failed the examination. Mrs. Odom's instructions were that in the event of failure (but only in the event of failure) the papers of these Negro applicants were to be segregated and provided to the Committee at its review of marginal papers prior to the release of the passing and failing grades. Since the Committee as a policy matter does not review the recommended grades of each Committee member if the grade is substantially below the passing grade it was necessary that Mrs. Odom segregate and provide the papers of all failing Negro applicants regardless of the severity of the failure. . . " Predicated upon the foregoing, it is obvious that your Petitioner, a non-Negroid, did not receive this especial treatment and finds this racial division of failing examinees to be invidious and unequal.

Regarding Respondent's request that the Court take judicial notice of Cause No. CIV. 71-692 Phx. in the United States District Court for the District of Arizona, Petitioner would like to point out that this matter had diverse issues from this Petition No. 71-1362, particularly, since it was a civil suit. It is respectfully submitted that this litigation is neither relevant nor material to Petitioner's case.

In paragraph two of the Respondent's ARGUMENT, it is alleged that Petitioner has quoted out of context certain statements of a member of the Committee given during the full day's closed hearing

before a Special Master in the Matter of Charles S. Murry, a Negro, Cause No. 10563, Respondent further claims that review of the transcript (Certified record label: Tang Hearing) "establishes beyond question that it is the policy and practice of Respondent to administer fairly and impartially to all applicants Bar examinations conducted in accordance with the Rules prescribed by the Supreme Court of Arizona." Petitioner objects to the ambiguous allegation of his quoting certain statements out of context and vehemently disputes the claim of fair and impartial treatment of all Bar examination applicants by reproducing, forthwith, verbatim a few pertinent excerpts from said transcript considered relevant and material. Starting at line 17 on page 153, Mr. Bursh, counsel for Mr. Murry, cross-examines the Committee Chairman, as follows:

Q In handling of minority applicants' exams, what is the procedure when a minority applicant fails to make a require(d) 70 average?

A Well there has been an occasion when Mrs. Odom has been instructed that after the grades had been received by her and tabulated that she is to advise the Committee on their final review as to whether or not any--when you say minority, I'm referring now to Negro or Black applicants who actually failed, my instructions are that those papers are to be made available to the Committee so we can review them to be sure that no one has made a mistake.

Q Do we (you) follow the same procedure with the Indian applicants?

A No, I probably would have if I had known there was an Indian applicant, but I didn't

know there was an Indian applicant, frankly.

Q What about Mexican-Americans?

A I really haven't given the matter any thought. This was a matter done perhaps a little bit impulsively and I have some reservations, and whether or not it would be continued I think is very debatable. In fact I don't think it will be continued.

(The foregoing testimony was made after the three Bar examinations in point. Has this policy been continued?)

Petitioner next quotes from said transcript, starting at line 9 on page 174, testimony wherein Mr. Murry cross-examines the Committee Chairman regarding Mr. Bursh, counsel for Mr. Murry and a Negro, who was admitted to the Bar following the July 1970 examination by resort to the Negro only segregation policy, as follows:

Q Did you personally pass Mr. Bursh?

A Yes.

Q You personally did that?

A I personally told the Committee, I told Mr. Bursh, I thought Mr. Bursh was qualified and the Committee agreed with me on a majority vote that Mr. Bursh was.

Q On your personal recommendation?

A I don't know if this was my personal recommendation, it was on a review of his papers at the time of our review session, the quality of his answers on the papers indicated an ability to practice law and based on that I recommended personally that he be passed; that I told Doris to give him a passing grade.

Q Give him a passing grade?

A Yes sir.

Q Had Mr. Bursh made 70 on that examin-

ation?

A I don't remember what he made.

Q But it wasn't 70?

A He did not originally get 70, no sir.

Q 70 is passing?

A He did not.

Q And 70 is passing, is it?

A Mr. Murry, I have told you three times that 70 is passing. He did not get 70 on the original grading. When the Committee reviewed it, before the grades were released, we discussed the matter and by unaminous agreement of the Committee members who were present it was agreed that Mr. Bursh's papers were of a sufficient quality that we would be justified conscientiously in recommending to the Supreme Court his admission to the Bar, and I told Doris Odom to give him a passing grade.

Further cross-examination of the Committee Chairman starting at line 10 on page 176 manifests the following:

Q BY MR. BURSH: The only thing that I would like to question Mr. Wilmer on is the purpose of your reviewing the minority applicants or the Black applicants' papers that have failed. Is it to see if any consideration can be given to that minority applicant in assisting him in passing?

A Consideration, Mr. Bursh, is to be sure that the man received fair treatment, to be sure that his papers, his answers have been analyzed carefully rather than in the hurly burly of reviewing two hundred papers.

Finally, the Committee Chairman on re-direct

examination responded to a very significant question, starting at line 22 on page 192, as follows:

> Q Did you give Mr. Murry's papers the same consideration upon reviewing them in 1970 after the July examination that you gave the other Black applicants' papers who were also reviewed?
>
> A Yes.

On page 5, paragraph two, of Respondent's ARGUMENT of his opposing brief in No. 71-1362, it is stated that, "There is not one shred of evidence contained anywhere in the record transmitted to this Court to establish or even suggest that Petitioner's examination papers were graded down or ...." Petitioner agrees with this statement, since he had never made such an allegation, whereas, the aforementioned transcript (Certified record label: Tang Hearing), manifests that this was one of Mr. Murry's main issues. Respondent appears to be clouding the issues or has made a serious mistake in portraying the truth of Petitioner's case. The balance of this disjunctive sentence is inconsistent with the last sentence of the STATEMENT on page 4 which refers to Exhibit 6. Exhibit 6 is Petitioner's formal petition to the Committee in accordance with Rule 28(c) XII E. Respondent's conclusion, that without a showing that Petitioner's examination papers were graded down his claim of discrimination is unfounded, is clearly erroneous.

The third paragraph, page 6, under the caption ARGUMENT of the opposing brief requires no detailed comment other than to state that again issue avoidance is done in a patent manner and this Rule is absolutely contrary to the principle of democracy.

Petitioner's Doctor, Nurse, Dentist, Lawyer, Accountant, Realtor, Pharmicist, Journalist and

other professional and layman friends in Arizona and in other States are deeply concerned with the issues of the Petition considering the same to be "well founded" and basic to our system of democracy.

In light of the inability of Respondent to face the issues presented in the Petition without avoiding and/or grossly distorting the facts, the need for plenary review of the action below is indisputable; indeed, Petitioner suggests that summary reversal is now in order.

Respectfully submitted,

William Jacob Johnson

WILLIAM JACOB JOHNSON,
pro se
1604 East Fremont Drive
Tempe, Arizona 85282

May 26, 1972